

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

SONY MUSIC ENTERTAINMENT, *et al.*,

Plaintiffs,

v.

COX COMMUNICATIONS, INC., *et al.*,

Defendants.

Case No. 1:18-cv-00950-LO-JFA

COX'S SUPPLEMENTAL MOTION TO SEAL

Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Local Civil Rule 5(C), Defendants (“Cox”) file this Motion to Seal as a Supplement to Cox’s Motion to Seal ECF No. 509 and move the Court to enter an order allowing Cox to file under seal Exhibit 7 Cox’s Motion *in Limine* No. 8 (ECF No. 498-7) and portions of the Memorandum in Support of its Motion *in Limine* No. 8 to Exclude Certain Evidence Relating to Peer-to-Peer Traffic on Cox’s Network (ECF No. 498) to the extent it relies on information from Exhibit 7. Exhibit 7 was designated under the Stipulated Protective Order in this case (ECF No. 58) (the “Protective Order”) by inCode Consulting as Highly Confidential – Attorneys’ Eyes Only, however it contains information that Cox designated as Highly Confidential – Attorneys’ Eyes Only. As explained below, the procedural prerequisites for sealing have been met as follows:

- a. “A statement why sealing is necessary, and why another procedure will not suffice, as well as appropriate evidentiary support for the sealing request.”**

Exhibit 7 to Motion *in Limine* No. 8 reveals specific details concerning how Cox implemented inCode Consulting’s services internally and managed its network. If exposed, it would reveal details about certain of Cox’s internal business practices that are unavailable to the public.

b. “References to the governing case law, an analysis of the appropriate standard to be applied for that specific filing, and a description of how that standard has been satisfied.”

Under current Fourth Circuit law, the district court must do the following before sealing any court records:

- (1) give public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives.

Ashcraft v. Conoco, Inc., 218 F.3d 282, 288 (4th Cir. 2000). Cox has met each procedural requirement.

To satisfy the first requirement, the Court must provide notice of a request for sealing in the court record and provide interested persons with “an opportunity to object.” *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984). Individual notice is not required, and the Court may give adequate notice either by “notifying the persons present in the courtroom of the request to seal” at the time of the hearing, or by “docketing [the sealing request] in advance of deciding the issue.” *Id.* In accordance with Local Civil Rule 5 procedure, Cox’s sealing motion was publicly docketed before the hearing on the Cox’s Motions *in Limine*.

To meet the second requirement, the Court must consider using redactions or limited sealing (either in scope or duration) in lieu of permanent, blanket sealing. Cox meets this requirement because it requests sealing only the Exhibit and portions of the Motion that reference the exhibit.

To meet the third requirement, the Court must make specific findings, supported by the

record, that justify sealing under the applicable standard. As set forth above, Cox designated the documents and/or information at issue as Highly Confidential or Confidential pursuant to the Protective Order in this case. Cox also meets the third requirement because the documents contain confidential proprietary information that, if exposed, could provide competitors in the market with an unfair advantage. *See In re Knight*, 743 F.2d at 235 (stating that the district court should consider “whether the records are sought for improper purposes, such as … unfairly gaining a business advantage”); *East West, LLC v. Rahman*, No. 1:11-cv-1380, 2012 WL 3843657 (E.D. Va. Sept. 4, 2012) (sealing documents concerning “highly sensitive business or personal information, the disclosure of which is highly likely to cause significant harm to an individual or to the business competitive position of the designating party”).

c. “Unless permanent sealing is sought, a statement as to the period of time the party seeks to have the matter maintained under seal and how the matter is to be handled upon unsealing.”

Cox seeks permanent sealing of these documents because there is no future date in which the disclosure of this information would not competitively harm Cox or reveal personal details about its subscribers.

d. A proposed order attached hereto.

Dated: October 23, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2019, the foregoing was filed and served electronically by the Court's CM/ECF system upon all registered users.

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